

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5731 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

DUDABHAI M RABARI

VERSUS

DISTRICT MAGISTRATE BANASKANTHA & ANR.

Appearance:

MR PJ VYAS for Petitioner

MS SIDDHI TALATI for Respondent No.1

MS KUSUM M SHAH for Respondent No.2

Coram: S.K. Keshote,J

Date of decision:15/08/1997

C.A.V. JUDGMENT

#. Heard learned counsel for the parties.

#. Under the order dated 11.10.85, annexure 'B' of respondent No.1, the respondent No.2 was appointed as Police Patel of Village Rasana, Taluka Deesa, District Banaskantha. The petitioner was one of the applicants for the aforesaid appointment but he was not given the same. This order has been challenged by petitioner by filing this Special Civil Application.

#. The petitioner has stated in para-5 of the Special Civil Application that vide application dated 4th October 1985, he pointed out the respondent No.1 that the respondent No.2 is involved in criminal offence and was committed to sessions Court. It has further been pointed out that respondent had encroached upon Gauchar lands and has cultivated the said lands. The Panchayat had issued notice on respondent No.2 to remove the encroachment. The Panchayat had also issued notice on respondent No.2 dated 10th march 1985 for recovering penalty from him. In these facts, the petitioner pointed out that the respondent No.2 is not a fit person to be appointed as Police Patel.

#. None of the respondents have filed reply to Special Civil Application. The learned counsel for respondent No.2 has shown me a zerox copy of the judgment of Sessions Court in criminal case against respondent No.2 in which he has been acquitted. However the learned counsel for respondent No.2 admits that for encroachment of Gauchar land, the Panchayat had imposed penalty upon respondent No.2.

#. The matter pertains to appointment of Police Patel, i.e. a person who has to see that law and order is properly enforced and maintained in a particular village, and to help police in maintaining law and order. Now a question does arise that can a person who is involved in serious offences of Section 397 of Indian Penal Code and admittedly who has made an encroachment on Gauchar land, be said to be a fit person for appointment as Police Patel? A reply to the same will be certainly in negative. A person of the character who is involved in such heinous offence, though acquitted lateron, the antecedents of the whom are very serious, all care should have been taken by respondent No.1 to see that such person is not appointed as Police Patel. The act of respondent No.2 to make encroachment on Gauchar land is

equally very serious. When the respondent No.2 has dared to make encroachment upon Gauchar land and he has been penalised for the same, how far his claim for Police Patel is justified. It is really shocking that the respondent No.1 has not taken note of these facts and has chosen to appoint a person as Police Patel who has gone to the extent of making encroachment on Gauchar lands. The respondent No.2 is a person who is in habit of taking law in his hands and the respondent No.1 has considered him to be a fit person to be appointed as Police Patel.

#. The learned counsel for respondent No.2 states that this order of appointment has been stayed and now the policy of appointment of Police Patel in the State has been discontinued. So this writ petition has become infructuous. It is true that in view of this fact, this Special Civil Application may not survive, but this is still a matter where the petitioner has been dragged in the litigation. The petitioner had earlier to the appointment of respondent No.2 as Police Patel, brought all of his aforesaid antecedents to the notice of respondent No.1 by filing an application, but still the respondent No.1 has appointed the respondent No.2 as Police Patel and as a result, the petitioner had to come up before this Court. The petitioner is not a rich person and litigation is certainly a financial burden which normally is difficult to bear by a person of the category to which the petitioner belongs. Stay has been granted by this Court as prima-facie it was found to be a case where respondent No.2 could not have been appointed as Police Patel. The writ petition has now become infructuous certainly but a poor person who was forced to spend money in this litigation has to be reimbursed by respondent No.1.

#. In the result, this Special Civil Application, though in view of the fact that the period for which the respondent No.2 has been appointed as Police Patel has expired as well as now this system of appointment of Police Patel in the State has been discontinued, no more survives and it is not necessary to quash the order annexure 'B', but the respondent No.1 who passed such an illegal order which compelled the petitioner to approach this Court should be directed to bear costs of expenses of this litigation incurred by the petitioner. The learned counsel for the petitioner, Shri P.J. Vyas has given out that the petitioner has incurred a total amount of Rs.1,250/- as expenses of this litigation.

#. In the result, though this writ petition is dismissed as having become infructuous, the respondent No.1 is

directed to pay Rs.1,250/- to the petitioner as costs of this litigation. The Special Civil Application and Rule stand disposed of in aforesaid terms.

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